

In the Supreme Court

R

v

Jackson

---

MOOT PROBLEM

---

Jordan Simpson is an 18 year old man, an apprentice builder, and a well-known 'drill' musician.

On the night of 15 September 2018 Jordan was waiting for his friends outside a chicken shop in South London when a man dressed in black ran up to him and stabbed him in the chest. Thankfully the knife missed Jordan's major organs and he was taken to hospital where he made a good recovery.

On 23 September 2018 police executed a search warrant in a bedsit occupied by 19 year old Lewis Jackson. Lewis was also a well-known 'drill' musician. The police had learned that in the weeks leading up to 15 September, Lewis and Jordan had posted a series of 'diss' tracks on YouTube where they insulted each other and boasted about how popular they were. In a video posted on 14 September 2018, Lewis had rapped '*Jordan better watch out or he gon' get poked*'.

The police found a large knife under Lewis's bed. He was arrested on suspicion of wounding with intent to cause grievous bodily harm contrary to section 18 of the Offences Against the Person Act 1861. The knife was found to be similar to the one used to stab Jordan, but forensic tests were inconclusive.

Lewis denied attacking Jordan and pleaded not guilty. At trial, the prosecution sought to adduce Lewis's video of 14 September 2018 as evidence of bad character. It was argued that his words in the videos were reprehensible behaviour as they glorified knife violence, and were relevant as they showed he disliked Jordan. Lewis denied disliking Jordan and said the 'diss' tracks were part of a concocted dispute designed to attract attention to his music. The words about Jordan getting 'poked' were a general comment about the rates of knife crime in South London and the likelihood *someone* might stab Jordan rather than a suggestion that Lewis would. Allowing the bad character application, HH Judge Wiley gave the following ruling:

The defence argue that the words in the video in question were intended as a commentary on knife crime rather than a glorification of it. Regardless of the intentions in posting it, I find that they had the clear effect of glorifying violence. I find that they constitute reprehensible behaviour, and are relevant to an issue in dispute between the accused and the Crown, namely whether the accused

disliked Mr Simpson. I have considered the power in s 101(3) to exclude bad character evidence on the grounds of unfair prejudice and reject the defence application. I will direct the jury as to the appropriate uses that may be made of the evidence.

Lewis was convicted. He was sentenced to three years' imprisonment. The prosecution also obtained a Criminal Behaviour Order under s.22 of the Anti-Social Behaviour Crime and Policing Act 2014. The terms of the order were that Lewis could not publish any further videos that "referenced violence". The order was made for an indefinite period.

Lewis appealed his conviction, arguing that the video should not have been admitted as bad character evidence. It was wrong in law for the judge to rule that Lewis' intentions were irrelevant to a finding of bad character. If the jury were not sure that he meant the words he said, they should have been directed to ignore them. Alternatively, the judge should have acceded to his counsel's application to exclude the video evidence under s.101(3) Criminal Justice Act 2003 as its admission was so prejudicial to the fairness of the proceedings.

Lewis also appealed the Criminal Behaviour Order, arguing that it was incompatible with his right to freedom of expression as protected by Article 10 of the European Convention on Human Rights.

In the Court of Appeal, a three-judge panel led by Lord Justice Drake allowed the appeal in part:

On the bad character point, the Court held that the judge was wrong to direct the jury that the intention behind Lewis' words was irrelevant to the question of bad character. The s.18 conviction was quashed.

On the Article 10 point, the Court of Appeal considered itself bound by the decision in *R v Avery* [2009] EWCA Crim 2670 and therefore ruled that the interference with Lewis' freedom of expression was not a breach of his Article 10 rights.

Both Lewis and the Crown now appeal to the Supreme Court. The certified questions are:

1. Can words capable of being understood as glorifying violence amount to reprehensible behaviour for the purposes of the bad character provisions of the Criminal Justice Act 2003, regardless of the speaker's intention in saying them?
2. Is the 'helpfulness' test in s.22 of the Anti-Social Behaviour Crime and Policing Act 2014 compatible with Article 10 ECHR?